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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 375

[Docket No. RM15-15-000; Order No. 806]

Disruptive Conduct at Commission Open Meetings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the CFR regulations which specify the roles available to the public at the Commission's open meetings. This rule utilizes language from the Federal Communication Commission's (FCC) open meeting regulation, and the Rural Telephone Bank's open meeting regulation, to clarify that the term "observe" does not include disruptive behavior. The rule also uses language from the FCC's open meeting regulation to clarify that communications made or presented by unscheduled presenters will not be considered by the Commission. Finally, the rule uses language similar to the Consumer Product Safety Commission's open meeting regulation, to clarify that members of the public may use electronic audio and visual equipment to record open meetings in a non-disruptive manner. The rule imposes no new obligations on the public.

DATES: This rule will become effective [**Insert_Date 30 days after publication in the FEDERAL REGISTER**].

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SUPPLEMENTARY INFORMATION:

ORDER NO. 806

FINAL RULE

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I. Introduction

1. By this final rule, the Federal Energy Regulatory Commission (Commission) is amending 18 CFR 375.203(b), which specifies the roles available to the public at the Commission's open meetings. This rule utilizes language from the Federal Communication Commission's (FCC) open meeting regulation, 47 CFR 0.602, and the Rural Telephone Bank's open meeting regulation, 7 CFR 1600.3, to clarify that the term "observe" does not include disruptive behavior. The rule also utilizes language from the FCC's open meeting regulation to clarify that communications made or presented by unscheduled presenters will not be considered by the Commission. Finally, the rule uses language similar to the Consumer Product Safety Commission's open meeting regulation, 16 CFR 1013.4, to clarify that members of the public may record open meetings in a non-disruptive manner. The rule imposes no new obligations on the public.

II. Background

2. The Commission has recently experienced multiple disruptions to its open meetings from individual protesters. The disruptions have consisted of members of the public making unscheduled statements, standing up repeatedly, walking about the room, and displaying signs.

3. The Commission's regulations outline the roles available to the public at the Commission's open meetings. Specifically, 18 CFR 375.203(b) states that "[m]embers of the public are invited to listen and observe at open meetings."

4. Like the Commission, other Federal agencies limit the conduct of the public at open meetings.¹ Several other agencies have regulations on open meetings that expressly address disruptive conduct by members of the public and their removal for such conduct.² The language of the rules of the FCC, EEOC, and the Rural Telephone Bank are particularly useful in clarifying the term “observe” as it appears in the Commission’s regulations. The FCC, EEOC, and the Rural Telephone Bank define “observation” as not including disruptive conduct.³ Furthermore, the FCC’s regulation addresses documents that an unscheduled presenter might seek to deliver at an open meeting, prohibiting their entry into the FCC’s official record.

¹ See, e.g., 12 CFR 311.2, 10 CFR 9.103, and 16 CFR 4.15 (Regulations of the Federal Deposit Insurance Corporation, Nuclear Regulatory Commission, and Federal Trade Commission limiting the participation of the public to observing open meetings).

² See, e.g., 47 CFR 0.602 (Federal Communication Commission defines “observation” as to not include “participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting”); *see also* 7 CFR 1600.3 (The Rural Telephone Bank defines “observation” as to not include “participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting”); *see also* 29 CFR 1612.3 (The Equal Employment Opportunity Commission defines “public observation” as to “not include participation or disruptive conduct by observers” and “any attempted participation or disruptive conduct by observers shall be cause for removal of persons so engaged at the discretion of the presiding member of the agency”); *see also* 17 CFR 200.410 (The Securities Exchange Commission permits the exclusion of “any person from attendance at any meeting whenever necessary to preserve decorum, or where appropriate or necessary for health or safety reasons”) and 45 CFR 702.52 (The Commission on Civil Rights empowers the presiding Commissioner to “exclude persons from a meeting” and “take all steps necessary to preserve order and decorum”).

³ See 47 CFR 0.602, 29 CFR 1612.3, and 7 CFR 1600.3, respectively.

5. Another related topic is possible disruption stemming from observers' use of personal electronic recording devices at open meetings. The applicable provision of the Commission's regulations, 18 CFR 375.203(b), allows members of the public to record open meetings in a non-disruptive manner.⁴ Other agencies similarly permit the recording of open meetings in a non-disruptive manner.⁵ The language adopted by the Consumer Product Safety Commission, stating that "[t]o the extent their use does not interfere with the conduct of open meetings, cameras and sound-recording equipment may be used at open Commission meetings," is particularly succinct in making this point.

III. Discussion

6. The Commission is concerned about the impact of public disruptions on its ability to conduct open meetings. To ensure compliance with the Government in the Sunshine

⁴ 18 CFR 375.203(b)(2)(i)-(iv) .

⁵ *See, e.g.*, 16 CFR 1013.4 (The Consumer Product Safety Commission provides that "[t]o the extent their use does not interfere with the conduct of open meetings, cameras and sound-recording equipment may be used at open Commission meetings"); *see also* 18 CFR 1301.43 (The Tennessee Valley Authority permits the public to "make reasonable use of electronic or other devices or cameras to record deliberations or actions at meetings so long as such use is not disruptive of the meetings") and 39 CFR 3001.43 (The Postal Rate Commission regulation states that "[m]embers of the public may not participate in open meetings. They may record the proceedings, provided they use battery-operated recording devices at their seats. Cameras may be used by observers to photograph proceedings, provided it is done from their seats and no flash or lighting equipment is used. Persons may electronically record or photograph a meeting, as long as such activity does not impede or disturb the members of the Commission in the performance of their duties, or members of the public attempting to observe, or to record or photograph, the Commission meeting").

Act,⁶ it is essential that the Commission's open meetings focus on the items listed in the posted agenda. Members of the public do not have a right to disrupt open meetings or to raise extraneous issues.⁷

7. The Commission is issuing this Final Rule to clarify that the term "observe" used in § 375.203(b) of its regulation, has the same meaning as the term "observation" in the regulations of the FCC and the Rural Telephone Bank.⁸ Thus, this rule merely clarifies that the term "observe" as used in § 375.203(b) does not mean the right to disrupt.⁹ The rule gives the Commission no new authority, and it imposes no obligations on the public that do not currently exist. The public already has an obligation to avoid disruptive conduct at the Commission's open meetings.

⁶ 29 CFR 2701.

⁷ The First Amendment does not provide a right to disrupt a Commission open meeting. *Cf. White v. City of Norwalk*, 900 F.2d 1421, 1424–1426 (9th Cir.1990) (holding that a city ordinance allowing removal of persons who disrupt, disturb, or otherwise impede orderly conduct of council meetings is not overly broad and not a violation of First Amendment rights); *Smith-Caronia v. United States*, 714 A.2d 764, 765 (D.C. Cir. 1998) (upholding the constitutionality of D.C. Code 9–112(b)(4), which prohibits disruptive conduct within any of the Capitol Buildings). Moreover, agencies do not violate the First Amendment when they "confine their meetings to specified subject matter." *Madison School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175 n.8 (1976).

⁸ While the EEOC essentially interprets "observation" the same way, the Commission is specifically utilizing the regulatory language of the FCC and the Rural Telephone Bank.

⁹ The Commission has a comparable rule in 18 CFR 385.2102(b), which states that, "[c]ontumacious conduct in a hearing before the Commission or a presiding officer will be grounds for exclusion of any person from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer."

8. The final rule also addresses the possibility that when disruptive conduct involves the reading of unscheduled statements, those statements could trigger potential violations of the Government in the Sunshine Act notice provisions, the ex parte communications provisions of the Administrative Procedure Act, and the Commission's ex parte communications rule, 18 CFR 385.2201. Specifically, incorporating language from Section 0.602(c) of the FCC's regulations into the Commission's regulations clarifies that disruptive statements, oral or written, will not be included in the record or considered by the Commission.

9. Finally, the Commission recognizes that its existing regulations concerning recording open meetings are unduly complex and out of date. The Commission is therefore amending its regulation to clarify that seated members of the public, or seated observers, may use electronic audio and visual recording equipment to record open meetings in a non-disruptive manner. In this regard, the Commission is utilizing language similar to that used by the Consumer Product Safety Commission.

IV. Information Collection Statement

10. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹⁰ However, this instant Final Rule does not contain any information collection requirements. Therefore, compliance with OMB regulations is not required.

¹⁰ 5 CFR 1320.12.

V. Environmental Analysis

11. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹¹ Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.¹² This rulemaking is exempt under that provision.

VI. Regulatory Flexibility Act

12. The Regulatory Flexibility Act of 1980 (RFA)¹³ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns an interpretation of current Commission regulations and practices. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

¹¹ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

¹² 18 CFR 380.4(a)(1).

¹³ 5 U.S.C. 601-12.

VII. Document Availability

13. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

14. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

15. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VIII. Effective Date

16. The Commission is issuing this rule as a Final Rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" This rule merely provides the public with guidance

concerning the existing regulation and reminds the general public of the roles available to the public at the Commission's open meetings. The rule will not significantly affect regulated entities or the general public.

17. These regulations are effective [**insert date 30 days after publication in the Federal Register**].

List of Subjects in 18 CFR Part 375

Open Meetings

By the Commission.

Issued: March 9, 2015

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Part 375, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 375 – THE COMMISSION

1. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352

2. Section 375.203 is amended by adding paragraphs (b)(1)(i) and (ii) and revising paragraph (b)(2) to read as follows:

§ 375.203 Open meetings.

* * * * *

(b) * * *

(1) * * *

(i) “Observe” does not include participation or disruptive conduct, and persons engaging in such conduct will be removed from the meeting.

(ii) The right of the public to observe open meetings does not alter those rules which relate to the filing of motions, pleadings, or other documents. Unless such pleadings conform to the other procedural requirements, pleadings based upon comments or discussions at open meetings, as a general rule, will not become part of the official record, will receive no consideration, and no further action by the Commission will be taken thereon.

(2) To the extent their use does not interfere with the conduct of open meetings,

electronic audio and visual recording equipment may be used by a seated observer at an open meeting.

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